

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL**

FOR: HEALTH CARE FINANCING ADMINISTRATION

1. TRANSMITTAL NUMBER:

9-9-0-7

2. STATE:

New York3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL
SECURITY ACT (MEDICAID)TO: REGIONAL ADMINISTRATOR
HEALTH CARE FINANCING ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

January 1, 1999, April 1, 1999, July 1, 1999

5. TYPE OF PLAN MATERIAL (Check One):

☐ NEW STATE PLAN☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)

6. FEDERAL STATUTE/REGULATION CITATION:

42 CFR Part 447.280

7. FEDERAL BUDGET IMPACT:

a. FFY 1998-1999 \$ (4.99)b. FFY 1999-2000 \$ (6.32)

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

Attachment 4.19-D Part II Pages 1 thru 43

*** SEE REMARKS

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION
OR ATTACHMENT (If Applicable):Attachment 4.19-D Part II Pages 1 thru 43

10. SUBJECT OF AMENDMENT:

Intermediate Care Facilities for the Developmentally Disabled (ICF/DD)

11. GOVERNOR'S REVIEW (Check One):

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT☐ OTHER, AS SPECIFIED:☒ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL:

13. TYPED NAME:

Dennis P. Whalen

14. TITLE:

Executive Deputy Commissioner

15. DATE SUBMITTED:

March 31, 1999

16. RETURN TO:

New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of New York

Methods and Standards for Establishing Payment Rates

Intermediate Care Facilities for the Mentally Retarded

TN 99-07 Approval Date APR 06 2001
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APR 01 1999
JUL 01 1999

Rate setting and financial reporting for intermediate care facilities for persons with developmental disabilities (ICF/DD). This section is effective January 1, 1999 for non-state operated facilities classified as Region II and III facilities, April 1, 1999 for all State operated facilities, and July 1, 1999 for non-state operated facilities classified as Region I facilities.

(a) Definitions applicable to this section.

(1) Intermediate Care Facilities for the Developmentally Disabled. For the purpose of this section: "Provider" shall mean the individual, corporation, partnership or other organization to which the OMRDD has issued an operating certificate, to operate a facility, or a State owned developmental center and to which the New York State Department of Health has issued a Medicaid provider agreement for such facility. For the purpose of this section: "Facility" shall mean

(i)(a) that program and site for which OMRDD has issued an operating certificate to operate as an intermediate care facility for the developmentally disabled, or

(b) a developmental center which consists of institutional beds, including those beds in Small Residential Units operated by a Developmental Disabilities Services Office (DDSO), but excluding those beds in Small Residential Units operated by a DDSO whose developmental center has closed or is scheduled to close, and

(ii) for which the New York State Department of Health has issued a Medicaid provider agreement.

(2) For the purposes of this section:

(i) A Region I facility is a facility which is located in Region I (other than a facility located in Region I which has been designated or elected to a Region II and III reporting cycle), or a facility which is located in Region II or III which has been designated or elected to a Region I reporting cycle in accordance with subpart 635-4 of this Title.

(ii) A Region II or III facility is a facility which is located in Region II or III (other than a facility located in Region II or III which has been designated or elected to a Region I reporting cycle), or a facility which is located in Region I which has been designated or elected to a Region II or III reporting cycle in accordance with subpart 635-4 of this Title.

(3) Region - The geographic regions are:

TN 99-07 -1-
42-22

Approval Date APR 06 2001

JAN 01 1999

JUL 01 1999

- (i) Region I (NYC) is New York City and includes the counties of New York, Bronx, Kings, Queens and Richmond.
 - (ii) Region II (NYC Suburban) includes the counties of Putnam, Rockland, Nassau, Suffolk and Westchester.
 - (iii) Region III (Upstate New York) includes all other counties in New York State.
- (4) Newly certified facility is an under thirty-one bed facility which has been in operation for less than five full years as of the start of a rate cycle, or an over thirty bed facility which has been in operation for less than two full years as of the start of a rate cycle.
- (5) Operating costs are allowable costs which are non-capital in nature. For purposes of this section, this includes day treatment, day service, transportation and regional FTE add-ons.
- (6) Capital Costs are allowable costs as specified in paragraph (f)(1) and (3) of this section.
- (7) Reimbursable Costs are allowable costs, either operating or capital, adjusted per the application of this section, and prior to the application of the trend factor.
- (8) Total reimbursable costs are reimbursable costs trended, as appropriate, per the application of subdivision (g) of this section.
- (b) Reporting requirements. Each provider shall submit reports in accordance with the requirements of 14 NYCRR subpart 635-4.
- (c) Rate setting.
- (1) Units of service.
 - (i) A unit of service is the unit of measure denoting lodging and services rendered to one consumer between the census-taking hours of the facility on two successive days; the day of admission but not the day of discharge shall be counted. One unit of service shall be counted if the consumer is discharged on the same day the consumer is admitted, providing there was an expectation that the admission would have at least a 24-hour duration.
 - (ii) Reserve bed days determined in accordance with 18 NYCRR section 505.9 and subdivision (i) of this section are units of service.

TN **99-07**

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Approval Date **JUN 06 2001**

Effective Date **JAN 01 1999** **APR 01 1999** **JUL 01 1999**

(2) Rate cycle.

- (i) For facilities of over thirty beds, the rate cycle is comprised of two twelve month rate periods.
- (ii) For facilities of under thirty-one beds the rate cycle is comprised of three twelve month rate periods.
- (iii) This rate cycle is divided into a base period and a subsequent period or periods.

(a) The base period is the first twelve month period of the rate cycle.

(1) The base period for non-state operated facilities is from January 1 to December 31 for Region II or III facilities. The first base period for non-state operated facilities begins January 1, 1988 for over thirty bed Region II or III facilities. The first base period for non-state operated facilities begins January 1, 1999 for under thirty-one bed Region II or III facilities.

(2) The base period for non-state operated facilities is from July 1 to June 30 for Region I facilities. The first base period for non-state operated facilities begins July 1, 1988 for over thirty bed Region I facilities, and July 1, 1999 for under thirty-one bed Region I facilities.

(3) For state operated facilities of under 31 beds, regardless of region, the first base period shall be April 1, 1999 to March 31, 2000 and shall remain April 1 to March 31 for every rate cycle thereafter. For state operated facilities of more than 30 beds and developmental centers, regardless of region, the first base period shall be April 1, 1988 to March 31, 1989 and shall remain April 1 to March 31 for every rate cycle thereafter.

(b) The subsequent periods for over thirty bed facilities is the second twelve month period of the rate cycle. The subsequent periods for under thirty-one bed facilities are the second and third twelve month periods of the rate cycle.

(1) The subsequent period for non-state operated facilities is from January 1 to December 31 for Region II or III facilities.

TN 99-07-31
87-12

APR 06 2001

JAN 01 1999

APR 01 1999

The first subsequent period begins January 1, 1989 for non-state operated facilities for over thirty bed Region II or III facilities. The first subsequent period for non-state operated facilities begins January 1, 2000 for under thirty-one bed Region II or III facilities.

- (2) The subsequent period for non-state operated facilities is from July 1 to June 30 for Region I facilities. The first subsequent period for non-state operated facilities begins July 1, 1989 for over thirty bed Region I facilities. The first subsequent period for non-state operated facilities begins July 1, 2000 for under thirty-one bed Region I facilities.
 - (3) For state operated facilities of less than 31 beds, regardless of region, the first subsequent period begins April 1, 2000 and shall remain April to March for every rate cycle thereafter. For developmental centers and state operated facilities over 30 beds, regardless of region, the first subsequent period shall be April 1, 1989 to March 31, 1990 and shall remain April 1 to March 31 for every rate cycle thereafter.
- (3) Computation of Rates (General).
- (i) All rates shall not be final unless approved by the Director of the Division of the Budget.
 - (ii) The commissioner may make adjustments to rates calculated in accordance with this section based upon the allowability of costs as determined by subdivision (f) of this section, and errors which occurred in the computation of the rate, changes in certified capacity, changes in payments for real property which have the prior approval of the commissioner and the Director of the Division of the Budget, or changes based upon previously determined final audit findings. If a facility has undergone a change in certified capacity, the commissioner may:
 - (a) request the facility to submit a budget report subject to 14 NYCRR subpart 635-4; or
 - (b) request the facility to submit incremental/decremental cost data which is associated with the capacity change.

TN 99-07-4
99-12

APR 06 2001
JAN 01 1999 APR 01 1999 JUL 01 1999

- (c) Utilizing the submitted incremental/decremental data or budget report, OMRDD shall make the appropriate upward or downward adjustment in a facility's rate; or
 - (d) continue the then existing rate for the remainder of the subject rate period in those instances where the commissioner has determined that the facility is operating at a loss for the rate period in question and adjusting the current rate would further increase such loss, or the facility is operating at a surplus for the rate period in question and adjusting the rate would further increase such surplus.
- (iii) Rate adjustments as described in subparagraph (ii) of this paragraph will be limited to those adjustments which will result in an annual increase or decrease in reimbursement of \$1,000 or more.
 - (iv) Notwithstanding any other provisions of this section, for over thirty bed facilities the reimbursable operating costs contained in the rates shall be computed as follows.
 - (a) For over thirty bed facilities other than developmental centers, OMRDD shall determine the total reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, and day training services) included in the payment rate in effect on December 31, March 31 or June 30 of the immediately preceding rate period applicable to that facility. The dollars for sheltered workshop and day training services shall be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work and day training costs will be increased by the trend factor calculated in subdivision (g) of this section and may be adjusted for appropriate appeals. Education and related services will be updated in accordance with clause (4)(ix)(c) of this subdivision. To determine the capital cost portion of the subsequent period rate, OMRDD shall review the component relating to capital costs for substantial material changes and, if said changes conform to the requirements of paragraphs (f)(1) and (3) of this section, make corresponding adjustments in computing the subsequent period rate.
 - (b)(i) For developmental centers, the statewide average rate for the period from April 1 to March 31 shall be calculated as follows. The total reimbursable operating costs contained in the payment rate in effect on the preceding March 31, with the exception of education and related service costs, after the adjustment for the latest available

TN 99-07-S

Supersedes TN 87-12

APR 06 2001

JAN 01 1999

Effective Date APR 01 1999 JUL 01 1999

projected number of units of service, shall be increased by the trend factor described in subdivision (g) and increased by an amount for education and related services in accordance with clause 4(ix)(c). In addition, if substantial, material changes that conform to the requirements of subdivision (h) are projected for the rate year these changes may be incorporated into the computation of the April 1 to March 31 period rate without an appeal being filed. OMRDD shall perform a rate year end volume variance adjustment to the April 1 to March 31 period rate for developmental centers by taking into account recalculated operating costs based upon a fixed to variable ratio of 64 percent fixed/36 percent variable, and units of service.

(ii) In addition, to encourage the closure of developmental centers, the commissioner will allow the net variable costs associated with the planned reduction of the developmental centers to become part of the operating costs of remaining like facilities. Net variable costs are total variable costs less the sum of that portion of the variable costs that become part of the operating costs of new state operated programs and services and the projected personal service attrition savings, as determined using historical attrition trends over the preceding three years, that occur at the developmental centers. The commissioner will allow reimbursement of these net variable costs as part of a plan to close the developmental centers. This incentive plan would provide for the reimbursement in total of net variable costs in the developmental centers without adjustment or offsets.

- (a) For each rate period, the net variable cost will be calculated based on the number of reduced beds planned for that rate period. 100 percent reimbursement of the net variable cost will be allowed for that rate period.
- (b) Under this incentive plan eligible costs will be limited to personal service costs including fringe benefits and overhead and other than personal service costs excluding capital costs.
- (c) To determine the capital cost portion of the rate, OMRDD shall review the component relating to capital costs for substantial material changes and if said changes conform to the requirements of paragraphs (f)(1) and (3) of this section, make corresponding adjustments in computing the subsequent period rate.

N 99-07
Supersedes TN 88-12
Approval Date APR 06 2001
Effective Date JAN 01 1999
APR 01 1999
JUL 01 1999

- (v) The computation of the rate resulting from the application of this paragraph can also be represented by the following formula:
- (a)
$$\text{trended reimbursable operating costs} + \text{untrended reimbursable operating costs} + \text{reimbursable capital costs} = \text{total reimbursable costs.}$$
 - (b)
$$\text{total reimbursable costs} / \text{units of service} = \text{the rate.}$$
- (vi) If OMRDD is unable to compute a rate for a newly certified facility, it may establish an interim rate which shall be the regional average for other facilities.
- (a) OMRDD shall replace the interim rate retroactively to the starting date of such interim rate by a rate developed from the initial budget report submitted by the facility.
 - (b) The rate developed from the initial budget report shall be subject to all the requirements of this section, and shall be effective for the remainder of the then current rate period.
- (vii) Since July 1, 1996, providers have been responsible for any necessary transportation to and from physician, dentist, and other clinical services, and any other transportation appropriate to the consumer's participation in community-based out of residence activities planned for or sponsored by the facility. Nothing herein shall be interpreted as precluding the accessing of separate Medicaid claiming for emergency/nonemergency ambulance services (as defined in 18 NYCRR 505.10) necessitated by the consumer's medical condition.
- (viii) (a) To encourage the closure of developmental centers, the commissioner will consider proposals to allow the variable costs associated with the closed facility or facilities to become part of the operating expenses of new or existing state operated under 31 bed facilities. The commissioner will allow a reasonable incentive plan for the reimbursement of the increased costs in the state operated under 31 bed facilities if it is coupled with the closure of a developmental center. An incentive plan would provide for the reimbursement in total of increased costs in the state operated under 31 bed facilities without adjustment or offsets.
- (i) 100 percent reimbursement of the increased cost for at least one full rate period, but less than two full rate periods.

TN 99-07⁻⁷⁻
Superseded: 88-37

APR 06 2001

JAN 01 1999 JAN 01 1999 JUL 01 1999

- (ii) 75 percent reimbursement of the increased cost for the second full rate period.
 - (iii) 50 percent reimbursement of the increased cost for the third full rate period.
 - (iv) 25 percent reimbursement of the increase cost for the fourth full rate period.
- (b) Costs to be eligible for this incentive plan will include but not be limited to direct care, support and clinical personal service and fringe benefit amounts for employees whose most recent prior employment was at a closed or scheduled to close developmental center.
- (i) In order to have the cost of former developmental center employees included in the incentive plan, the state operated facility applying for a rate adjustment must hire such employee within twelve months of the official closing date of the developmental center.
 - (ii) Salaries and fringe benefit amounts paid to eligible employees by the facility cannot exceed the average salary and fringe benefit amount paid to comparable employees currently on that facility's payroll.
- (c) Incentive plan applications from provider shall be made in writing to the commissioner.
- (i) The application shall identify the employees, their job titles, salary levels, date hired and B/DDSO.
- (ix) To accelerate the closure and to encourage a reduction in the size of developmental centers, the commissioner will consider proposals to allow the variable costs associated with a developmental center to become part of the operating expenses of new and existing state operated under 31 bed facilities. The variable costs associated with the developmental center will be allowed for the transition which is the period beginning on the date an official announcement to close a facility or facilities and ending on the date of actual closure. Also variable costs associated with the planned conversion of beds which is at least 10 percent change in the facility census will be allowed. The commissioner will allow a reasonable incentive for the reimbursement of the increased costs in the state operated under 31 bed facilities during the transition and/or conversion period. An incentive plan would provide for the reimbursement in total of increased costs in the state operated under 31 bed facilities without adjustments or offsets.

TN 99-07

Superseded by 98-27

Date APR 06 2001

JUL 01 1999

- (a) The commissioner will allow the following reimbursement for approved proposals:
 - (i) 75 percent reimbursement of the increased costs incurred during the transitional closure period. On the effective date of closure, reimbursement of increased costs will be considered under subsection (c)(3)(viii).
 - (ii) 75 percent reimbursement of the increased costs incurred during the conversion period. The conversion period will be for at least one full rate period but less than two full rate periods. If during the conversion period, an official announcement of closure occurs, the reimbursement of increased costs may be considered under (c)(3)(ix)(a)(i).
 - (b) Costs to be eligible for this incentive plan will include but not be limited to direct care, support and clinical personal service and fringe benefit amounts for employees whose most recent prior employment was at a developmental center.
 - (i) In order to have the cost of former developmental center's employee included in the incentive plan, the facility applying for a rate adjustment must hire such employee during the transitional and conversion periods.
 - (ii) Salaries and fringe benefit amounts paid to eligible employees by the facility cannot exceed the average salary and fringe benefit amount paid to comparable employees currently on that facility's payroll.
 - (c) Incentive plan applications from the provider shall be filed in accordance with (c)(3)(viii)(c).
- (4) Computation of the base period rate.
- (i) For each facility the commissioner shall establish rates in accordance with the certified capacity as stated in a facility's provider agreement.
 - (ii) Base period rates for over thirty bed facilities and developmental centers shall be computed on the basis of a full 12-month cost report submitted by the provider for the 12-month period beginning 24 months prior to the effective date of the base period, and subject to the cost category screens described herein. For a newly certified over thirty bed facility, OMRDD

TN 99-02
Superseded by TN 99-08

Approval Date APR 06 2001

JAN 01 1999

APR 01 1999 JUL 01 1999

shall use budget data, as submitted pursuant to NYCRR subpart 635-4 or 681.12 (which ever is applicable).

- (iii) The initial base period rate for under thirty-one bed Region II and III non-state operated facilities shall be computed on the basis of a full twelve month cost report submitted by the provider for the twelve month period beginning January 1, 1994. The initial base period rate for under thirty-one bed Region I non-state operated facilities shall be computed on the basis of a full twelve month cost report submitted by the provider for the twelve month period beginning July 1, 1994. For state operated facilities of under thirty-one beds, regardless of region, the initial base period rate shall be computed on the basis of a full twelve month cost report submitted by the provider for the twelve-month period beginning April 1, 1994. Thereafter, the base period rates for under thirty-one bed facilities shall be computed on the basis of a full twelve month cost report submitted by the provider for the twelve month period beginning 36 months prior to the effective date of the base period. For a newly certified under thirty-one bed facility, OMRDD shall use the budget data submitted pursuant to NYCRR subpart 635-4 or 681.12 (which ever is applicable).
- (iv) For a newly certified facility, the initial base period rate shall be determined pursuant to subparagraph (vii) of this paragraph. For under thirty-one bed facilities the units of service are determined by multiplying the certified capacity of the facility by 365 days. For over thirty bed facilities, units of service are the certified capacity of the facility multiplied by 365 days multiplied by 99 percent. A facility's submitted budget costs may be adjusted based on a comparison to the actual costs of other existing facilities operated by the provider in order to determine the costs of an efficient and economic operation. If the provider does not operate other facilities, the submitted budget costs may be adjusted based on a comparison to the average costs of other facilities in the same region.
- (v) For facilities which are not newly certified facilities, the initial base period rate shall be determined pursuant to subparagraph (vii) of this paragraph. For under thirty-one bed facilities the units of service are determined by multiplying the certified capacity of the facility by 365 days. For over thirty bed facilities, units of service are the higher of the certified capacity of the facility multiplied by 365 days multiplied by 99 percent, or the actual reported units of service.
- (vi) As appropriate, OMRDD shall apply trend factors to each facility's reimbursable operating costs, except for education and related services.

TN 99-07
Supervisor 97-12

APR 06 2001

JAN 01 1999

0 1 1999

- (vii) The computation of the rate resulting from the application of this paragraph can also be represented by the following formula:
- (a)
$$\text{trended reimbursable operating costs} + \text{untrended reimbursable operating costs} + \text{reimbursable capital costs} = \text{total reimbursable costs}$$
- (b)
$$\text{total reimbursable costs} / \text{units of service} = \text{the rate}$$
- (viii) For under thirty-one bed facilities there shall be a day treatment add-on such that facilities which have day treatment services included in their operating costs shall be reimbursed in their base period rate. For day treatment services, a facility shall be reimbursed at a varying funding level, for a maximum of 225 days per year. The facility will be reimbursed at the lower of either the actual costs per the cost report (or for budget costs for newly certified facilities) or the calculated per diem fee for day treatment services pursuant to section 690.7 of this Title in effect for the appropriate fee period.
- (ix) For all facilities there shall be a day services add-on such that facilities which have the following day services included in their operating costs shall be reimbursed as follows for these services.
- (a) For sheltered workshop services, effective July 1, 1995, the facility will receive a reimbursable cost of \$9,899 per annum for each program participant. For program participants to whom the conditions set forth in subparagraph (x) of this paragraph apply, the facility will receive a reimbursable cost of \$9,499 per annum for each program participant.
- (b) For day training services, effective July 1, 1995, the facility will receive a reimbursable cost of \$11,033 per annum for each program participant. For program participants to whom the conditions set forth in subparagraph (x) of this paragraph apply, the facility will receive a reimbursable cost of \$10,633 per annum for each program participant.
- (c) Effective June 1, 1995, the facility will be reimbursed for education and related services in accordance with Title 8 NYCRR. These costs shall not be trended.
- (x) Effective July 1, 1997 an under thirty-one bed facility may submit to the commissioner a request for a transportation add-on for transportation of

TN 99-07
Superseded by
Approval Date APR 06 2001
Effective Date JAN 01 1999
APR 01 1999
JUL 01 1999

TN 99-07
Superseded by 99-22

persons to and from an outpatient service certified pursuant to Article 28 of the Public Health Law for certain persons if:

- (a) in order to meet a person's active treatment needs the person's Individual Program Plan requires a day service (comprising regular attendance at a sheltered workshop or a day training service) in combination with visits to the outpatient service described above, and
 - (b) prior to July 1, 1996, transportation to and from the outpatient service was not included in the rate for the operator of the outpatient service, and
 - (c) prior to July 1, 1996, the rate approved by the local social services district was billed separately by a transportation vendor for transportation to and from the outpatient service, and
 - (d) the vendor ceased billing for transportation of persons residing in the facility to and from the outpatient service.
- (xi) The transportation add-on shall be a reimbursable cost added to a facility's rate subject to the conditions set forth in subparagraph (x) of this paragraph. The transportation add-on shall be calculated using payment/rate data based on local social service district approved Medicaid payment rates made to transportation vendors as of June 30, 1996. A weighted transportation average shall be calculated for each facility by dividing the aggregate transportation payments by the aggregate day service transportation round trips for all persons described in subparagraph (x) of this paragraph.
- (a) The weighted transportation average for each facility shall be ranked among all day treatment facilities state wide pursuant to the methodology for calculating the transportation component add-on for day treatment facilities described in NYCRR Part 690 subclauses 690.7 (e)(3)(vii)(a)(1) through and including (a)(3).
 - (b) The modified weighted transportation average shall be multiplied by the total to and from day service transportation units of service to determine reimbursable transportation costs.
- (5) Computation of the subsequent period rate.
- (i) The reimbursable operating costs contained in the subsequent period rates shall be computed as follows. OMRDD shall determine the total

TN 99-07

88-37

APR 06 2001

APR 01 1999
JAN 01 1999

reimbursable operating costs (with the exception of education and related service costs, sheltered workshop services, day training services) included in the payment rate in effect on December 31, March 31 or June 30 of the immediately preceding rate period applicable to that facility. The dollars for sheltered workshop and day training services shall be revised based upon the number of individuals participating in the program. The reimbursable operating costs plus any revised sheltered work and day training costs will be increased by the trend factor described in subdivision (g) of this section and may be adjusted for appropriate appeals. Education and related services will be updated in accordance with clause (4)(ix)(c) of this subdivision. OMRDD will determine the capital cost portion of the subsequent period rate by reviewing the component relating to capital costs for substantial material changes. If such changes conform to the requirements of paragraphs (f)(1) and (3) of this section, OMRDD will make corresponding adjustments in computing the subsequent period rate.

- (ii) The computation of the rate resulting from the application of this paragraph can also be represented by the following formula:
 - (a) $\text{trended reimbursable operating costs} + \text{untrended reimbursable operating costs} + \text{reimbursable capital costs} = \text{total reimbursable costs}.$
 - (b) $\text{total reimbursable costs} / \text{units of service} = \text{the rate}.$
- (iii) For a newly certified facility which begins to provide services that fall within a subsequent period, the initial rate shall be calculated as though it were a base period rate.

- (d) Cost category screens and reimbursement for under thirty-one bed facilities.

In order to determine the reimbursable operating costs to be included in the rate calculation, the following screens (i.e., the maximum amount that will be allowed for a specific item or group of items) will be used. The regional screens corresponding to the actual geographic location of the facility will be applied.

- (1) Administration screens and reimbursement.
 - (i) Screens.
 - (a) Administrative screen values shall be equal to the sum of the total reimbursable administrative costs and the total reimbursable administrative fringe benefits, less the value of the efficiency adjustment, included in the rate effective on the last day of the

Approval Date APR 06 2001
Superseded TN 99-07
Effective Date JUL 01 1999
JAN 01 1999